



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**MAR - 6 2014**

Mark E. Elias, Esq.  
Daneil B. Nudelman, Esq.  
Perkins Coie  
700 Thirteenth Street, N.W., Ste. 600  
Washington, D.C. 20005-3960

RE: MURs 6722 & 6723

Dear Messrs. Elias and Nudelman:

On March 4, 2013, the Federal Election Commission notified your clients of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On February 25, 2014, the Commission found, on the basis of the information in the complaint and information provided by you, that there is no reason to believe that House Majority PAC and Shannon Roche in her official capacity as treasurer violated 2 U.S.C. § 441b with respect to the production and dissemination of the House Majority PAC video referenced in the Complaints in these matters. Accordingly, the Commission closed its file in these matters.

Documents related to the cases will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact Michael A. Columbo, the attorney assigned to this matter at (202) 694-1341.

Sincerely,

Mark D. Shonkwiler  
Assistant General Counsel

Enclosure

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BEFORE THE FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

In the Matter of

MUR 6722/6723

House Majority PAC and Shannon Roche in her

official capacity as treasurer

Dr. Paul Ruiz for Congress and Greg Lucas in his

official capacity as treasurer

Bera for Congress and Rita Copeland in her

Official capacity as treasurer

Rep. Raul Ruiz

Rep. Ami Bera

I. INTRODUCTION

The Complaints allege that House Majority PAC, an independent expenditure-only political committee, made in-kind corporate contributions by creating and posting a video on its website and YouTube featuring Rep. Raul Ruiz, Rep. Ami Bera, and others thanking House Majority PAC for supporting them in the 2012 elections.<sup>1</sup> As a result, the Complaints claim that House Majority PAC, Ruiz, Bera, and Ruiz's and Bera's committees and treasurers violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2.<sup>2</sup>

House Majority PAC contends that the video is not an in-kind contribution to the candidates because it does not satisfy the content prong of the Commission's test for coordinated communications — specifically, the video is neither an electioneering communication nor a

<sup>1</sup> In 2012, House Majority PAC disclosed making \$29,396,484.81 in independent expenditures. See House Majority PAC 2012 Year-End Report at 4 (Jan. 31, 2013), <http://images.nictusa.com/pdf/186/13960658186/13960658186.pdf>.

<sup>2</sup> Compl. at 1-2 (Feb. 13, 2013), MUR 6722 (House Majority PAC; Ruiz); Compl. at 1-2 (Feb. 13, 2013), MUR 6723 (House Majority PAC; Bera). House Majority PAC posted the video to its website and YouTube on January 29, 2013. *House Majority PAC: We Make the Difference*, HOUSE MAJORITY PAC, <http://www.youtube.com/watch?v=F4JFEFgNheQ> (last visited Aug. 3, 2013); *House Majority PAC: We Make the Difference*, HOUSE MAJORITY PAC, <http://www.thehousemajoritypac.com/ads/page/2/> (last visited Aug. 3, 2013). Because we conclude that House Majority PAC's video did not constitute an in-kind contribution to Ruiz or Bera, we do not address whether such an in-kind contribution, had it been made, would have been a prohibited corporate contribution under 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2.

1 public communication, as required by 11 C.F.R. § 109.21.<sup>3</sup> House Majority PAC asserts that its  
2 video is not an electioneering communication because it is not a “broadcast, cable or satellite  
3 communication,” and it is not a public communication because it is an internet communication  
4 that was not placed for a fee on another person’s website.<sup>4</sup> Further, House Majority PAC asserts  
5 that the video fails the other requirements of the content prong: it did not republish campaign  
6 material, expressly advocate the election or defeat of a candidate, and it was not sufficiently  
7 proximate to an election.<sup>5</sup> Ruiz’s and Bera’s Responses concur with or make the same  
8 arguments as House Majority PAC’s Response.<sup>6</sup>

9 The Commission finds that there is no reason to believe that Respondents violated the  
10 Federal Election Campaign Act of 1971, as amended (the “Act”), as alleged in the Complaints.  
11 The House Majority PAC video does not satisfy the content prong of the Commission’s  
12 coordinated communications test.

## 13 II. ANALYSIS

14 A payment for a “coordinated communication” is an in-kind contribution from the payor  
15 to the candidate with whom it is coordinated.<sup>7</sup> Under 11 C.F.R. § 109.21(b), a communication is  
16 coordinated with a candidate when it is: (a) paid for by a person other than the candidate;  
17 (b) satisfies one of the content standards of the Commission’s coordination test; and (c) satisfies  
18 one of the conduct standards of the Commission’s coordination test.<sup>8</sup>

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<sup>3</sup> House Majority PAC Resp. at 2, MUR 6722/6723. House Majority PAC filed a single response addressing the allegations in the Complaints in both MUR 6722 and MUR 6723.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 2-3, n.8.

<sup>6</sup> See Ruiz Resp. at 2 (Apr. 22, 2013), MUR 6722 (House Majority PAC; Ruiz); Bera Resp. at 1-2 (Apr. 18, 2013), MUR 6723 (House Majority PAC; Bera). Ruiz is represented by attorneys from the same firm as those representing House Majority PAC.

<sup>7</sup> 11 C.F.R. § 109.21(b).

<sup>8</sup> *Id.* § 109.21(a).

1 House Majority PAC's payments to create the video satisfy the first prong of the  
2 coordination test. House Majority PAC's payments for the video do not constitute in-kind  
3 contributions to Bera and Ruiz or their campaign committees, though, because the video does not  
4 satisfy the content prong of the coordination test.

5 The content prong can be satisfied in one of five ways.<sup>9</sup> The first is if the communication  
6 qualifies as an electioneering communication.<sup>10</sup> The House Majority PAC video does not meet  
7 the definition of an electioneering communication because it was not publicly distributed by a  
8 television station, radio station, cable television station, or satellite system,<sup>11</sup> and it was not  
9 published within 60 days before a general election, or within 30 days of a primary election, for  
10 offices sought by the candidates.<sup>12</sup>

11 The remaining four ways to satisfy the content prong require that the communication be a  
12 "public communication."<sup>13</sup> The Act defines a public communication as "a communication by  
13 means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor  
14 advertising facility, mass mailing, or telephone bank to the general public, or any other form of  
15 public political advertising."<sup>14</sup> The Commission's regulations further clarify that the phrase  
16 "general public political advertising" — the only listed means of communication that might  
17 encompass House Majority PAC's internet video — does not include "communications over the  
18 Internet, except for communications placed for a fee on another person's Web site."<sup>15</sup> Content  
19 such as a video that a person places on their own website or on YouTube without paying a fee

<sup>9</sup> See *id.* § 109.21(c)(1)-(5).

<sup>10</sup> *Id.* § 109.21(c)(1).

<sup>11</sup> See *id.* § 100.29(a), (b)(1).

<sup>12</sup> See *id.* § 100.29(a)(2).

<sup>13</sup> See *id.* § 109.21(c)(2)-(5).

<sup>14</sup> 2 U.S.C. § 431(22).

<sup>15</sup> 11 C.F.R. § 100.26.

1 cannot be a coordinated communication. *See* Internet Communications, 71 Fed. Reg. 18,589,  
2 18,590, 18,600 (May 12, 2006) (explanation and justification); *see also* Factual & Legal  
3 Analysis at 8, MUR 6477 (Turn Right USA) (advertisement uploaded to YouTube for free was  
4 not a public communication because it was not placed for a fee); *see also* Advisory Op. 2011-14  
5 (Utah Bankers Association Action PAC) (concluding that a committee's website and emails  
6 soliciting contributions to and expressly advocating the election of certain candidates were not  
7 coordinated communications because they were neither electioneering communications nor  
8 public communications). Therefore, the video that House Majority PAC placed on its own  
9 website and YouTube is not a public communication. Because the video is neither an  
10 electioneering communication nor a public communication, it fails the content prong of the  
11 Commission's coordinated communications test.

12 In MUR 6722 the Commission finds that there is no reason to believe that House  
13 Majority PAC and Shannon Roche in her official capacity as treasurer made, and Dr. Raul Ruiz  
14 for Congress and Greg Lucas Rodriguez in his official capacity as treasurer and Rep. Raul Ruiz  
15 received, a prohibited corporate in-kind contribution in violation of 2 U.S.C. § 441b(a) with  
16 respect to the production and dissemination of the video referenced in the Complaint. And in  
17 MUR 6723, the Commission finds that there is no reason to believe that House Majority PAC  
18 and Shannon Roche in her official capacity as treasurer made, and Bera for Congress and Rita  
19 Copeland in her official capacity as treasurer and Rep. Ami Bera received, a prohibited corporate  
20 in-kind contribution in violation of 2 U.S.C. § 441b(a) with respect to the production and  
21 dissemination of the video referenced in the Complaint.